IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 15 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

MEHMOODMIAN A TOPIWALA

Appearance:
MR AKIL QURESHI FOR MR MANISH R BHATT for Petitioner
MR RD PATHAK for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 11/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions are referred to us in respect of

assessment year 1981-82 :-

1. Whether, the Tribunal has not erred in law and on facts in confirming the view taken by the AAC in holding that Sec. 64 of the Income-tax Act, 1961 was not applicable in respect of the interest payment of Rs.8,453/- made by the assessee to his wife ?

2. Whether, the Tribunal has not erred in law and on facts in not accepting the view taken by the ITO that this was a case of cross transfer, in favour of the assessee's wife and hence provisions of section 64 of the Income-tax Act, 1961 were rightly invoked ?

2. The reference arose from the decision dated 13..6.1985 of the Income-tax Appellate Tribunal in ITR No. 2447/Ahd/1984. The Tribunal disposed of the said appeal in favour of the assessee on the basis of its decisions dated 25.8.1980 and 14.11.1983 in ITA Nos. 604 and 606 of 1983 respectively in respect of this very controversy centering around the cross transfer in favour of the assessee's wife. The said decisions came up for scrutiny of this Court in CIT vs. this very same assessee, (1995) 213 ITR 615. It has been held therein that the conditions mentioned in Section 64(1)(iii) stood satisfied and, therefore, the Income-tax Officer was justified in adding the amount of interest paid by the wife to the income of the assessee while working out the assessee's income for assessment year 1975-75. No distinguishing features are pointed out on behalf of the assessee to take a different view.

3. Following the aforesaid decision, we hold that this was a case of cross transfer and, therefore, the provisions of Section 64 of the Income-tax Act, 1961 were applicable in respect of the interest payment of Rs.8,453/- made by the assessee to his wife and that the Income-tax Officer had rightly invoked the aforesaid provisions. We accordingly answer the questions referred to us in favour of the revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-